

## REMARKS

This is a reply to the Office Action mailed February 21, 2003, with a shortened statutory response period of three (3) months from the mailing date, extended three months by Petition filed herewith. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-99 are presently pending in the application and stand rejected. Applicants acknowledge the Examiner's withdrawal of the election/restriction requirement. Applicants respectfully traverse the rejections of these claims.

### **I. Rejections Under 35 U.S.C. §101**

The Examiner has provisionally rejected claims 1-99 under the judicially created doctrine of obviousness-type double patenting as claiming the same invention as that of claims 1-99 of copending allowed application no. 09/874,799. Applicants submit this rejection is not proper under 35 USC § 101 or under the judicially created obviousness-type double patenting. All claims of the present application specify a method for making submicron particles that are friable, or easily broken down into smaller particles. None of the claims of the '799 application are limited to producing friable particles. Accordingly, Applicants respectfully request a withdrawal of this rejection under 35 USC § 101.

### **II. Rejections Under 35 U.S.C. §102**

The Examiner has rejected claims 1-5, 10, 16-19, 23-31, 35, 54-57, 61, 62, 69, 71-74, 78-82, and 86 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,133,908. Applicants respectfully traverse these rejections.

The '908 Patent discloses a method for preparing a dispersible colloidal system of spherical particles having a size less than 500 nm. The method includes the steps of:

- 1) preparing a liquid phase of a substance in a solvent and a surfactant;
- 2) preparing a liquid phase of a non-solvent, the non-solvent being miscible in all proportions with the solvent;
- 3) the addition of the solutions of 1) and 2) with the other with moderate stirring to produce a colloidal suspension of nanoparticles; and
- 4) optionally removal of solvents.

Claim 1 recites a method for preparing crystalline particles. There is no disclosure in the '908 Patent for "adding energy to the pre-suspension" or for preparing crystalline particles. Therefore, the rejection of claims 1-5, 10, 11, 17-20, 25-29, 31-34, and 39 is improper under 35 U.S.C. §102.

**III. Rejections Under 35 U.S.C. §103**

The Examiner has rejected claims 1-10, 16-42, 44-51, 53-62, 67-93, and 95-99 in view of the '908 patent discussed above. Applicants respectfully traverse this rejection.

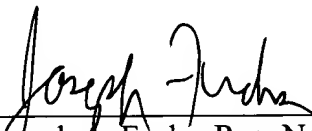
There is no disclosure in the '908 patent from making friable particles. Accordingly, the Examiner has failed to present a prima facie case of obviousness.

Accordingly, Applicants respectfully submit the pending claims are non-obvious, and patentable in view of the '908 Patent.

In view of the foregoing Amendments and Remarks, Applicants respectfully submit that Claims 1-99 are in condition for allowance and respectfully request early notice of the same.

Respectfully submitted,  
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